

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 23, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL No. S-3853a

Hawaii

Amendment of Easement No. S-3853a to the United States of America for Water Pipeline and Appurtenant Equipment Purposes, Kaohe & Kaohe IV, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/ 4-4-15:01 (por.) & 09 (por.), & 4-4-16:03 (por.) & 06 (por.)

APPLICANT:

United States of America

LEGAL REFERENCE:

Sections 171-13 and 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaohe & Kaohe IV, situated at Hamakua, Island of Hawaii, identified by Tax Map Key: 3rd/ 4-4-15:01 (por.) & 09 (por.), & 4-4-16:03 (por.) & 06 (por.), as shown on the attached map labeled Exhibit A.

AREA:

5.51 acres, more or less.

ZONING:

State Land Use District:	Conservation, Resource Subzone
County of Hawaii CZO:	Unplanned

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by State Water Lease No. S-3853 and Easement No. S-3853a, both to the United States of America.

CHARACTER OF USE:

Non-exclusive easement and right-of-way to locate, construct, operate, maintain, repair, patrol and remove a water pipeline or pipelines and equipment appurtenant thereto in, over and across the subject lands.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The proposed amendment of the maintenance obligations set forth in Easement No. S-3853a is a negligible change or expansion of an existing use. See Exhibit B attached.

The existence and use of the water system predates the creation and regulation of land uses within the State conservation districts in 1964. The proposed amendment of the maintenance obligations set forth in Easement No. S-3853a does not require the filing of a conservation district use application (CDUA). Applicant will need to consult with the Office of Conservation and Coastal Lands as to whether any future work on the water system will require the filing of a CDUA.

DCCA VERIFICATION:

Not applicable. The United States of America is not required to register with the Department of Commerce and Consumer Affairs.

REMARKS:

Applicant United States of America (Government) and the Board of Land and Natural Resources (Grantor) entered into Easement No. S-3853a as of August 18, 1964 covering the Government's maintenance of a water pipeline and appurtenant equipment located on the southern flank of Mauna Kea that is used for drawing water from the Hopukani, Waihu and Liloe Springs. A copy of the Easement No. S-3853a is attached as Exhibit C. It provides in part that:

4. The location, construction, operation, maintenance, repair, patrol and removal of said water pipeline or pipelines and appurtenant equipment shall be done at the sole cost of the Government.

The pipeline described in the easement is used to deliver water to the Government's Pohakuloa Training Area as well as to facilities in the Mauna Kea State Recreation Area (MKSRA) managed by the Division of State Parks. The springs, the diversion facilities, storage facilities, waterlines, and MKSRA facilities are located within the Mauna Kea Forest Reserve under the control and management of the Division of Forestry and Wildlife (DOFAW). The water from the springs is not potable, and is used primarily within the MKSRA for sanitation.

At its meeting of March 11, 2010, agenda Item E-1, the Board approved the request of State Parks for the State to enter into a memorandum of agreement (MOA) with the Government regarding changes in the allocation of maintenance costs for the diversion, storage and delivery components of the water system.¹ The Government proposed that its share of the allocation be increased to 65% and the State's share be reduced to 35%. In exchange, the Government will install a new waterline from the water treatment facility at Pohakuloa Training Area to the MKSRA that will provide State Parks and DOFAW with potable water. The economic benefit to the State in agreeing to this proposal was analyzed in the State Parks submittal.

State Parks requested Land Division's involvement because Land Division manages Easement No. S-3853a. The easement requires amendment to change the above-quoted provision that places the maintenance obligation of the water pipeline and appurtenant equipment solely on the Government. Accordingly, staff is recommending that Paragraph 4 of the easement be deleted in its entirety and replaced with the following:

4. The Government and the Grantor acknowledge that the water transmitted by the water pipeline or pipelines and appurtenant equipment services both parties' needs. The parties' respective obligations for the location, construction, operation, maintenance, repair, patrol and removal of said water pipeline or pipelines and appurtenant equipment shall be allocated between the Government and the Grantor by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Grantor's Board of Land and Natural Resources.

The Government has not had a lease, permit, easement or other disposition of State lands

¹ A copy of the March 11, 2010, Item E-1 submittal is included in a companion submittal before the Board at the present meeting regarding State Water Lease No. S-3853.

terminated within the last five years due to non-compliance with such terms and conditions.

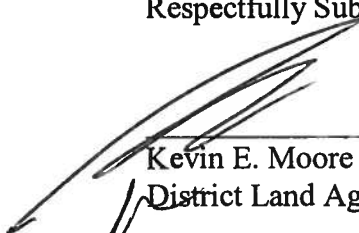
Comments were solicited in April 2011 on the MOA and reallocation of water use and maintenance obligations with respect to the amendment of State Water Lease No. S-3853. No agency had any objection to the reallocation or amendment of the lease. Staff did not solicit comments on the amendment of Easement No. S 3853a because it involves the same reallocation issues presented in the request for comments on the amendment of State Water Lease No. S-3853.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed amendment of Easement No. S-3853a as provided by Chapter 343, HRS, and Chapter 11-200, HAR, the amendment will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the amendment of Easement No. S-3853a as follows:
 - A. Delete Paragraph 4 on page 2 of the easement in its entirety and replace it with the following:
 4. The Government and the Grantor acknowledge that the water transmitted by the water pipeline or pipelines and appurtenant equipment services both parties' needs. The parties' respective obligations for the location, construction, operation, maintenance, repair, patrol and removal of said water pipeline or pipelines and appurtenant equipment shall be allocated between the Government and the Grantor by a separate Memorandum of Agreement (MOA) executed by the parties, as may be amended from time to time. The initial MOA and any amendment thereto shall require the prior written approval of Grantor's Board of Land and Natural Resources.
3. The amendment of Easement No. S-3853a shall further be subject to the following:
 - A. The standard terms and conditions of the most current amendment of easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and

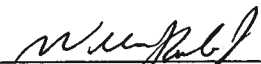
- C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,




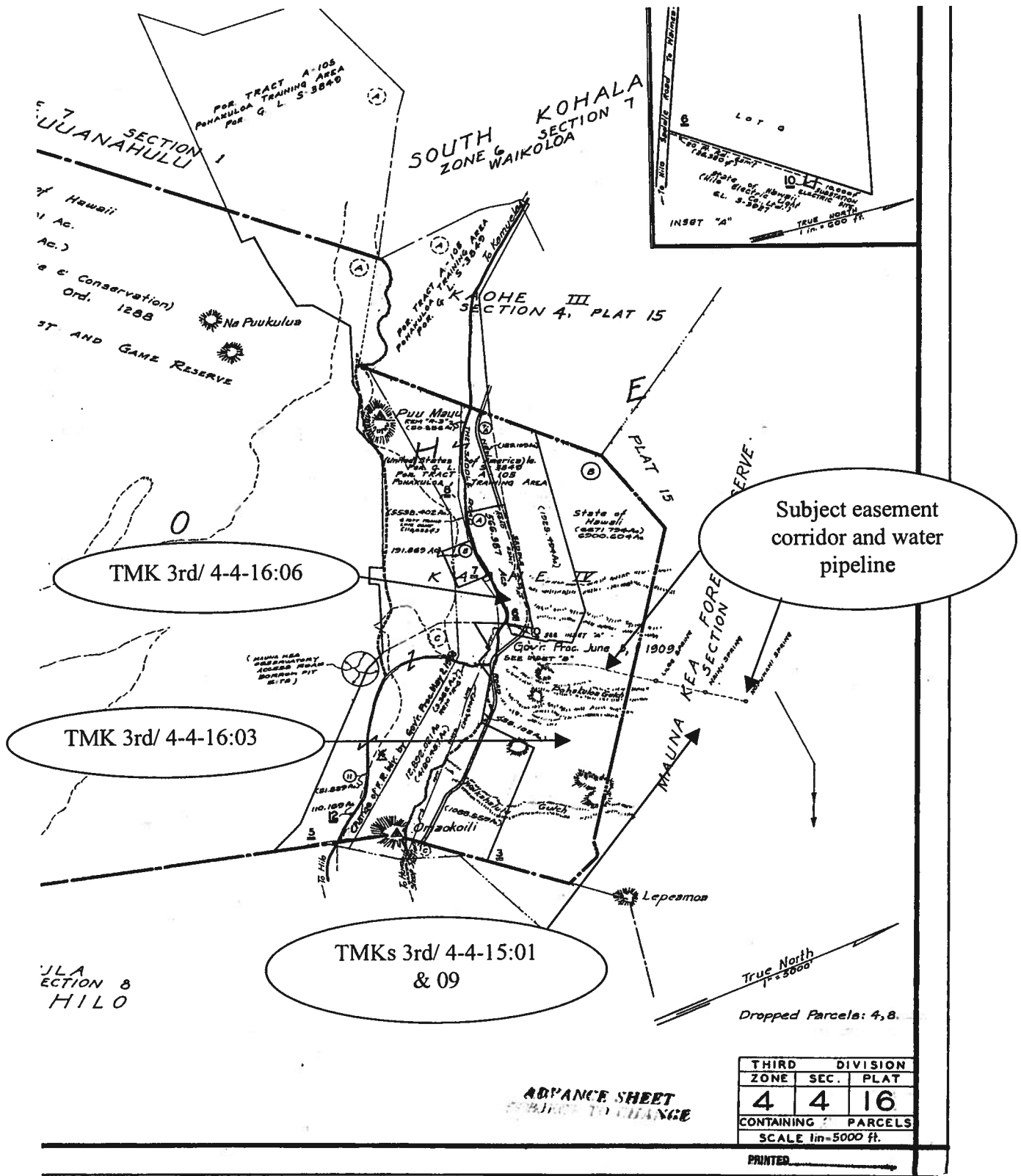
Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson





NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

EXEMPTION NOTIFICATION

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR


Project Title:	Amendment of Easement No. S-3853a to the United States of America for Water Pipeline and Appurtenant Equipment Purposes
Project Location:	Kaohe IV & V, Hamakua, Island of Hawaii, Tax Map Keys: 3rd/4-4-15:01 (por.) & 4-4-16:03 (por.)
Project Description:	Amendment of easement to change allocation of maintenance obligations between State of Hawaii and United States of America
Consulted Parties:	DLNR Office of Conservation and Coastal Lands; DLNR Division of State Parks; DLNR Division of Forestry and Wildlife
Exemption Class No.:	In accordance with the "Exemption List for the State of Hawaii, Department of Land and Natural Resources, as Reviewed and Concurred Upon by the Environmental Council (Docket 91-EX-2, December 4, 1991), the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing [HAR § 11-200-8(a)(1)]."
Exemption Item No. And Description:	Class No.1, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

EXHIBIT B

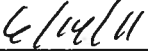
This exemption is appropriate because the water pipeline and appurtenant equipment are already in existence under an easement executed in 1964, and the only change contemplated by the subject amendment is a reallocation of the maintenance obligations for the water pipeline and appurtenant equipment. The amendment of the easement for the limited purposes of reallocation of maintenance obligations will result in no material change or significant cumulative impact. This exemption applies only to the amendment of the easement and not to any construction activities that may be undertaken to install new or replacement pipelines or other infrastructure. The United States of America, DLNR State Parks, and/or Division of Forestry and Wildlife will need to address the environmental impacts of any such activities separately. If further actions are taken that result in a material change, the United States of America, DLNR State Parks, and/or Division of Forestry and Wildlife will be required to be in compliance with Chapter 343.

Recommendation:

The amendment of Easement No. S-3853a to the United States of America in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the amendment is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to any future use of the lands, the United States of America, DLNR State Parks, and/or Division of Forestry and Wildlife shall be responsible for compliance with Chapter 343, HRS, as amended.



William J. Aila, Jr., Chairperson



Date

RECORDATION REQUESTED BY:

U. S. Army Engineer Division,
Pacific Ocean

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECEIVED FOR RECORD

LIBER 4821 PAGES 478 thru 482

'64 AUG 20 PM 1:38

/s/ M. Adachi

INDEXED /1/ EK REGISTRAR

AFTER RECORDATION, RETURN TO:

U. S. Army Engineer Division,
Pacific Ocean
Phone: 542986

RETURN BY: MAIL () PICKUP (X)
REQUESTOR TO FILL ABOVE

SPACE ABOVE THIS LINE FOR REGISTRAR'S USE

Control No. 130-40

EASEMENT

Tract E,
Pohakuloa Training Area

THIS INDENTURE, made and entered into this 18th day of August,
19 64, by and between the STATE OF HAWAII, represented by its Board of Land
and Natural Resources, hereinafter called the "Grantor," and THE UNITED STATES
OF AMERICA, hereinafter called the "Government,"

WITNESSETH:

That the Grantor, for and in consideration of the sum of ONE DOLLAR
(\$1.00), the receipt and sufficiency of which are hereby acknowledged, and of
the terms, conditions and covenants herein contained and on the part of the
Government to be observed and performed, does hereby grant unto the Government
a non-exclusive easement and right-of-way to locate, construct, operate, main-
tain, repair, patrol and remove a water pipeline or pipelines and equipment
appurtenant thereto in, over and across the parcel of land described in
Exhibit "A" attached hereto and made a part hereof. TOGETHER WITH the right
from time to time and at all reasonable times to enter upon the easement area
and to cross adjacent land of the Grantor for convenient access for the above-
mentioned purposes.

EXHIBIT C

TO HAVE AND TO HOLD the said easement unto the Government for a term of sixty-five (65) years beginning August 18, 1964 and ending August 17, 2029; provided that should the Government cease to use any portions of the easement area for a period of three (3) consecutive years the rights herein granted for those portions shall cease and determine without any action on the part of the Grantor; and provided further, that this easement or any portions thereof may be cancelled at any time by the mutual written agreement of both parties.

THIS EASEMENT is granted subject to the following terms, conditions and covenants:

1. All construction performed by the Government shall be accomplished in accordance with standard engineering practices.
2. All improvements placed in or on the easement area by the Government shall be and remain the property of the Government and may be removed or otherwise disposed of by the Government at any time; provided, however, that removal of the Government's improvements shall not adversely affect the Grantor's water system.
3. Upon completion of any work performed in or on the said easement area by the Government, the Government shall remove all equipment and unused materials therefrom and shall leave the work area in a clean and presentable condition satisfactory to the Grantor.
4. The location, construction, operation, maintenance, repair, patrol and removal of the said water pipeline or pipelines and appurtenant equipment shall be done at the sole cost of the Government.
5. The Grantor shall have full use of the surface and subsurface to an extent that will not unduly interfere with the rights herein granted.
6. The Grantor will not be responsible for any loss, liability, claim, or demand for property damage, property loss, or personal injury, including but not limited to death, arising out of any injury or damage caused by or resulting from any act or omission of the Federal Government in connection with the Federal Government's use of the premises described herein.
7. This easement is not subject to assignment by the Government.
8. The easement interest hereby granted supersedes all interests, rights and privileges heretofore granted by the Territory of Hawaii to the Government by means of the letter permit specifically identified in Exhibit "A" hereto.
9. The Grantor warrants that no person or selling agency has been employed or retained to solicit or secure this easement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Grantor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right

to annul this easement without liability or in its discretion to require the Grantor to pay, in addition to the contract price or lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

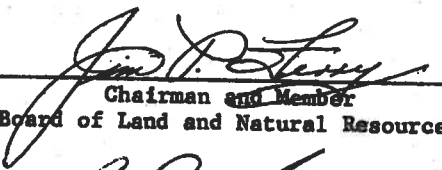
10. No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this easement or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company if the easement be for the general benefit of such corporation or company.

11. All expenditures to be made by the Government hereunder shall be subject to the availability of funds for the purpose.

12. This indenture is not subject to Title 10, United States Code, Section 2662.

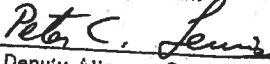
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

STATE OF HAWAII

By: 
Chairman and Member
Board of Land and Natural Resources

And By: 
Member
Board of Land and Natural Resources

APPROVED AS TO FORM


Deputy Attorney General

THE UNITED STATES OF AMERICA

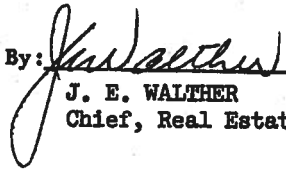
By: 
J. E. WALTHER
Chief, Real Estate Division

EXHIBIT "A"

POHAKULOA TRAINING AREA

Tract E

Land situated at Kaohe, Hamakua, Hawaii.

Being a strip of land fifteen (15.00) feet wide and extending seven and a half (7.50) feet on each side of the following described center line:

Beginning at the west end of this center line on the boundary of Tract C of Pohakuloa Training Area, the coordinates of said point of beginning from Government Survey Triangulation Station "Omaokoili" being 17,113.27 feet North and 10,849.87 feet West, thence running by azimuths (measured clockwise from true South):

- | | |
|-------------|--|
| 1. 302° 30' | 1,800.00 feet; |
| 2. 276° 37' | 1,300.00 feet; |
| 3. 201° 00' | 4,400.00 feet; |
| 4. 223° 00' | 7,000.00 feet; |
| 5. 217° 30' | 1,500.00 feet to Hopukani Spring and containing an area of 5.51 acres, more or less. |

The foregoing right-of-way was granted by the Territory of Hawaii by letter permit dated 9 August 1957 from the President, Board of Commissioners of Agriculture and Forestry, to the District Engineer, U. S. Army Engineer District, Honolulu.

SECTION C

